

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 104 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
STATE OF GUJARAT

Versus

PATEL HARGOVANBHAI AMBARAM      NILAM TALKIES PATAN

-----  
Appearance:

MR KT DAVE, APP for Appellant

MR KV SHELAT for Respondent No. 1

-----  
CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/03/98

ORAL CAV JUDGEMENT

1. The appellant- State of Gujarat has preferred this appeal against the judgment and order of acquittal dated 24.10.1990 passed by the ld. Judicial Magistrate (F.C.), Patan in Criminal Case No. 287/85 whereby the ld. trial Judge acquitted the accused- respondent Patel Hargovanbhai Ambaram of the offences punishable under Sec.7(1), 16(1)(a)(i) of the Prevention of Food Adulteration Act. (hereinafter referred to as the PFA

Act).

2. According to the case of the prosecution, the appellant- Food Inspector appointed for the area of Patan Nagarpalika, visited the grossery shop of the respondent accused on 13.3.1994 at about 9.30 a.m. and purchased turmaric powder from the shop of the respondent accused and same was collected as a sample for analysis under the provisions of the PFA Act. The sample was sent to the Public Analyst and was found adulterated and not in accordance with the standards and, therefore, the appellant- Food Inspector filed a complaint against the accused in the Court of ld. Judicial Magistrate (First Class), Patan which came to be registered as Criminal Case No. 287/85. After the trial, the ld. Magistrate, held that the respondent accused not guilty of the offences alleged against him and vide order under appeal, the respondent accused came to be acquitted.

3. Ld. APP has taken this Court through the entire record and evidence led by the prosecution. The impugned judgment, taken in its overall perspective, is in our opinion, not assailable. I agree with the assessment of the prosecution evidence on record before the ld. Trial Judge and conclusions drawn therefrom and the findings arrived at by the ld. Trial Judge. The ld. Trial Judge has rightly observed and held that the plastic bag in which turmaric powder was packed is not proper container for preparing sample as the same is not air-tight and, thus, the appellant has not prepared sample in accordance with rules and, therefore, the appellant has not complied with the provisions of Rule 14 of the Prevention of Food Adulteration Act. It is settled legal position that if sample is not taken properly and if sample is taken in breach of Rule 14 of the PFA Act, the complaint based on the Public Analyst's Report in respect of said sample, is liable to be quashed and set aside. It is also settled legal position that provisions of Rule 14 of the PFA Act are mandatory in nature and violation thereof renders the complaint liable to be quashed and set aside.

4. Ld. Magistrate has rightly appreciated that the sample of turmaric powder is not collected and/or sealed as per the requirement of the Rules framed under the PFA Act and it is not easy to seal a polyethylene bag with a wax seal and the same cannot be said to be an airtight container. Ld. APP has not successfully pointed out any reason to take a different view than the one which is taken by the ld. Trial Judge.

5. The respondent accused had stepped into the witness box and on the date of deposition, he was aged about 60 years. On appreciating the total evidence, it transpires that the respondent accused was a small

trader. It is also pertinent to note that even during the analysis, turmaric powder collected by way of sample was not found with prohibited oil solluble cloter colour or water sollule coltar colour. Microscopic examination of the sample is in favour of the respondent accused. According to the report of the Public Analyst, some Sodium Chloride ( Salt ) and maize powder were found. The ld. Trial Judge, at the time of appreciating entire evidence, seems to have appreciated all these aspects and more particularly the fact that the sample collected by the appellant accused is not in accordance with Rule 14 of the Rules which is mandatory in nature. As discussed above, in my opinion, the reasons given, findings reached and conclusions arrived at by the ld. Trial Judge are just, proper, legal and supported by the evidence on record and, therefore, there is no reason to disturb the findins arrived at by the ld. Trial Judge. I fully agree with the same. In view of the observations made by the Appex Court in the case of State of Karnataka v/s Hemareddy, reported in AIR 1981 sC 1417, it is not necessary to repeat the narration of the evidence or to reiterate the reasons given by the trial Court.

6. For the reasons recorded as above, this appeal is hereby dismissed.

00000000

\*rawal